Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000074-001 DT 05/23/2013

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
J. Eaton
Deputy

U.S. POOL CONSTRUCTION INC

JASON M VENDITTI

v.

BERNARD BANAHAN (001)
ANN MARIE BANAHAN (001)

BERNARD M BANAHAN

MOON VALLEY JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2012121623.

Plaintiff-Appellant U.S. Pool Construction Inc. (Plaintiff, U.S. Pool) appeals the Moon Valley Justice Court's determination dismissing its (1) contract; and (2) unjust enrichment claims against Defendants. Plaintiff contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

This matter emanates from an agreement to repair a pool negotiated between (1) Defendants Bernard and Ann Marie Banahan; and (2) Brian Morris aka The Ugly Pool Guy. Defendants and Mr. Morris dba "We Fix Ugly Pools" engaged in the following: (1) a series of e-mails between Defendants and Brian Morris; (2) Brian Morris provided a business card with the handwritten offer to "Call for your free estimate" with only two names on the card—Brian Morris and "The Ugly Pool Guy;" (3) a document thanking Defendants for meeting with Brian on April 2nd to discuss the project needs that included the logo for "The Ugly Pool Guy" and gave an e-mail reference of info@wefixuglypools.com; a phone number—602-253-4499—; fax number—602-253-5009—; and address—717 W. Bethany Home Rd. Phoenix, Az. 85013; (4) a proposal in the name of We Fix Ugly Pools.com dated April 2, 2012, indicating it was prepared by Brian/Jessee; had an address of 2509 N. 7th Street, Phoenix, Az. 85006; a phone number of 602-253-4499; and a fax number of 602-253-5009; (5) an Estimate dated April 23, 2012, from "The Ugly Pool Headquarters" with an address of 7558 W. Thunderbird Rd. #1–621, Peoria Az. 85381 and—towards the bottom of the invoice—a sentence saying "Thank you for choosing We Fix Ugly Pools for your swimming pool remodel." The Estimate also included an e-mail address of

accounting@wefixuglypools.com and a web site of www.wefixuglypools.com. None of these documents listed Plaintiff by name or indicated either Brian Morris or The Ugly Pool Guy had any relationship with Plaintiff. None of these documents included a Registrar of Contractors license number.

On April 23, 2012, Defendant Ann Marie Banaham signed that she received a copy of a notice of rights pursuant to Arizona Revised Statues [sic.] 32–1158 listing a contract date of April 19, 2012 and a contract number of RR12–0419–BM01. Brian Morris was listed as the Sales Person on this Notice and the logo at the top was for We Fix Ugly Pools.com. In addition, the "wefixuglypools.com" website and address of 7558 West Thunderbird Road, Suite #1, PMB 621 Peoria, Arizona, 85381 was listed as the company address. The document included the Arizona ROC license number 211511. This document did not refer to Plaintiff. Although the notice of rights referred to a contract by number, neither party provided a copy of this contract.

On May 3, 2012, "The Ugly Pool Headquarters" sent a Pool Renovation Invoice claiming a balance due of $4,048.09. This document included an ROC number—211511—at the top but also did not reference Plaintiff by name. An additional document entitled Customer Responsibilities and Maintenance was also sent. This document included the logo for "The Ugly Pool Guy" and the heading of "We Fix Ugly Pools.com" with the 7558 West Thunderbird address. It was ended with the words "Swim-cerely [sic.]" and included the name of "Brian W Morris, THE Ugly Pool Guy" [sic.] Once again, the document failed to include any reference to Plaintiff.

The parties engaged in a series of e-mail correspondence. Plaintiff's correspondence was sent from Brian Morris [brian@wefixuglypools.com] and listed at the bottom "The Ugly Pool HQ (Pool and Spa Supply). One e-mail was dated May 14, 2012, at 10:27 AM and included a physical address of 7910 North 43rd Avenue, Glendale Arizona, 85301 and added the business was located in the Fry's Shopping Center and had a corporate mailing address at 7558 West Thunderbird Road, PMB 621, Suite #1. This e-mail also included several e-mail addresses all incorporating the We Fix Ugly Pools.com as part of the e-mail address. A second e-mail—dated June 6, 2012 at 7:28 AM—listed a physical address of 7910 North 43rd Avenue, Glendale Arizona, 85301 and added the business was located in the Fry's Shopping Center.

On June 6, 2012, Plaintiff filed a Preliminary Twenty Day Lien Notice and listed itself as U.S. Pool Construction, Inc. dba We Fix Ugly Pools. It used the 7558 West Thunderbird OMB 621, Suite 1 address as its own. This was the first time Plaintiff listed itself in any document with Defendants. On June 22, 2012, Plaintiff filed a complaint alleging (1) breach of contract; and (2) unjust enrichment. As part of its general allegations, Plaintiff alleged Defendants entered into an agreement with U.S. Pool for the remodeling of their swimming pool and that U.S. Pool fully performed its obligations. Thereafter, on July 24, 2012, Defendants filed a Motion To Dismiss claiming U.S. Pool was not the real party in interest. The trial court granted this Motion on August 23, 2012.

On September 6, 2012, Plaintiff filed a Motion For A New Trial claiming the trial court's dismissal was unjust and contrary to law because Plaintiff was the only party with standing to sue Defendants. The gravamen of this claim was (1) We Fix Ugly Pools is a fictitious trade name with no right to sue or be sued; and (2) Brian Morris was not a licensed contractor and was acting as the agent of a corporation. Plaintiff claimed it was the real party in interest. Defendants responded by asking the trial court to treat Plaintiff's Motion For A New Trial as a Motion For Reconsideration. On October 15, 2012, the trial court denied Plaintiff's Motion For A New Trial. That same day, the trial court granted Defendants' Motion to treat Plaintiff's Motion For A New Trial as a Motion for Reconsideration.

Plaintiff filed a timely appeal. Defendants filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. Was U.S. Pool The Real Party In Interest.

Plaintiff alleged it was the proper party to bring the lawsuit because (1) it did its business under the trade name We Fix Ugly Pools; and (2) Brian Morris was its authorized agent. Defendants countered with Brian Morris' failure to disclose (1) his agency relationship with U.S. Pool or (2) that We Fix Ugly Pools was a dba for U.S. Pool. Defendants then asserted they had no business relationship with Plaintiff.

While Plaintiff is correct that corporations can only act through their authorized officers or agents, Plaintiff's position ignores the reality that (1) Plaintiff never disclosed its corporate status to Defendants and (2) thereby caused Defendants to contract with an entity that Defendants were not aware of. There is no issue about whether Mr. Morris disclosed his relationship as an agent for Plaintiff. He did not. The question is whether Mr. Morris' failure to disclose his status as a corporate agent (1) relieves him of liability; and (2) allows U.S. Pool to substitute itself in place and instead of Mr. Morris.

Arizona lacks binding precedent on this issue. However, our sister states have addressed similar issues and their rulings may prove to be instructive. Therefore, this Court will look to persuasive authority from our sister states[1] for assistance in analyzing this claim.

Law of Sister States

In *Benjamin Plumbing Inc. v. Barnes*, 162 Wis. 2d 837, 470 N.W.2d 888 (1991) the Supreme Court of Wisconsin discussed the liability of a corporation when its corporate status was not disclosed and ruled the trier of fact may look to the acts and circumstances surrounding a transaction to determine if, at the time of contracting, there were circumstances indicating there was either actual or constructive notice of the corporate status. The Wisconsin Supreme Court held:

[1] See *Walker v. City of Scottsdale*, 163 Ariz. 206, 209, 786 P.2d 1057, 1060 (Ct. App. 1989) where the Court of Appeals considered cases from "our sister states" in interpreting recreational use statutes and *In re Estate of Gordon*, 207 Ariz. 401, 404, 87 P.3d 89, 92 (Ct. App. 2004) where the Court of Appeals reviewed the jurisprudence of sister states who had adopted the Uniform Probate Code.

> Second, the fact that Benjamin Plumbing was aware that Whitcomb was acting on behalf of an entity called RHN reveals nothing of Benjamin's awareness of the type of business organization it was dealing with. All business entities are not corporations. In fact, being an incorporated business itself, Benjamin Plumbing could have reasonably concluded that RHN would have used its corporate name in its firm letterhead, as did Benjamin, if it were in fact a corporation. As previously noted, Benjamin had no affirmative duty to investigate the business ownership record of the principal, RHN. Whitcomb, as an agent, had the obligation to disclose RHN's corporate status in order to prevent incurring liability on the contract. RHN was essentially using a tradename.

Benjamin Plumbing, Inc. v. Barnes, 162 Wis. 2d at 853-54, 470 N.W.2d at 895. Similarly, in *Unisource Worldwide, Inc. v. Barth*, 109 S.W.3d 252, 254 (Mo. Ct. App. 2003) the Missouri Court of Appeals discussed the liability of an agent who enters into a contract with a third party without disclosing the identity of his principal. The Missouri Court of Appeals quoted with approval from *Corporate Interiors, Inc. v. Randazzo,* 921 S.W.2d 124, 126–27 (Mo. App. 1996) the following:

> The general rule with respect to agent liability provides that one who, as an agent for another, enters into a contract with a third party without disclosing his agent status, or discloses his agent status without disclosing the identity of his principal, can be held liable on the contract at the third party's election. *David v. Shippy*, 684 S.W.2d 586, 587–88 (Mo.App.S.D.1985). The duty is on the agent to inform the third party of the actual identity of the principal in order to avoid liability; "it is not enough for the agent to disclose or for the third party to know the agent is acting for another." *Id*. at 588. Likewise, the third party's mere ability to discover the name of the principal is insufficient to remove an agent's liability. *Id.; see also Grote Meat Co. v. Goldenberg,* 735 S.W.2d 379, 385 (Mo. App. E.D.1987) (agent not relieved of liability where principal sent third party payment checks bearing the name of the principal.) Also, the fact of incorporation will not relieve an agent of his or her burden of disclosing a corporate principal. *David,* 684 S.W.2d at 588. However, execution of contracts in a corporate name that contains an indicia of corporate status, such as "Inc." or "Corp." or the like can be a sufficient disclosure. *Id*.
>
> *Corporate Interiors, Inc. v. Randazzo,* 921 S.W.2d 124, 126–27 (Mo.App.1996).

The Missouri Court of Appeals in *Unisource Worldwide, Inc. v. Barth, id.,* 109 S.W.3d at 254 continued:

> Here, as in *Corporate Interiors,* the only business name appearing on the credit application was an unregistered fictitious name, in this case, Creative Printing & Design. No reference was made to the corporate principal, Barth Enterprises.

The Missouri Court of Appeals then ruled:

> Absent disclosure of a corporate principal's agency identity, a third party dealing with the agent may consider the transaction to be with the agent and the agent deemed to have intended to pledge his personal responsibility. *Grote Meat Co. v. Goldenberg*, 735 S.W.2d 379, 385 (Mo.App.1987)

Unisource Worldwide, Inc. v. Barth, *id.*, 109 S.W.3d at 255.

Texas also holds to the rule that the duty to disclose devolves on the agent. In *Wynne v. Adcock Pipe and Supply*, 761 S.W.2d 67 (Tex. App. 1988) the Texas Court of Appeals discussed the failure of the Plaintiff—Wynne—to inform Defendant—Adcock—about the Plaintiff's corporate status. The Texas Court of Appeals noted (1) Wynne asserted the Defendant had the duty to investigate the corporate status; but (2) ruled that it disagreed. The Texas Court of Appeals held:

> Wynne and the corporation assert Adcock had the duty to investigate the corporate status. We disagree. The test of disclosure is Adcock's actual knowledge, or reasonable grounds to know, of the corporation's existence or identity. *A to Z Rental Center v. Burris*, 714 S.W.2d 433, 435 (Tex.App.—Austin 1986, writ ref'd n.r.e.). Wynne claims that Adcock had the duty to investigate the corporate status because Adcock knew (1) the merchandise was being ordered for a business entity known as "J.W. Drilling;" (2) that Wynne was authorized to place orders on behalf of such entity; and (3) that a company with employees and business officers was already in existence at the time of the purchase.
>
> The name, J.W. Drilling, gives no indication that a corporate entity is involved. A business name meets the requirements of the Business Corporation Act for a corporate name if it uses the terms "incorporated," "corporation," or "company." TEX.BUS.CORP.ACT.ANN. art. 2.05 (Vernon 1980). *See also Lassiter v. Rotogravure Committee, Inc.*, 727 S.W.2d 8, 10 (Tex. App.—Dallas 1987, writ ref'd n.r.e.). There is nothing in the name to give Adcock any notice.

Wynne v. Adcock Pipe & Supply, 761 S.W.2d at 69. Plaintiff—U.S. Pool—asserted Defendants had the opportunity to discover the relationship between U.S. Pool and Brian Morris since both used the same Registrar of Contractors license number. Defendants, like Adcock in *Wynne v. Adcock Pipe and Supply*, *id.*, had no reasonable basis to believe a corporation was involved in the pool contract and no notice of any corporate status. None of the documents or e-mails supplied to Defendants indicated any corporate status or gave any notice that a corporate entity was involved in their transaction.

Texas is not alone in holding that a party to an agreement is not required to check the status of a business to determine if the business is incorporated. The Vermont Supreme Court concurred with this belief and, in *Biron v. Abare*, 147 Vt. 567, 569, 522 A.2d 230, 231-32 (1987) stated:

> Defendant's contention that plaintiff could have checked the status of the company with the Vermont Secretary of State's office and learned that it was a corporation is without merit. Compliance with Vermont's requirements for corporate status does not relieve defendant of his duty of fair disclosure under agency law, nor do Vermont's corporate laws impose any duty on plaintiffs to examine the public records to determine the status of every customer with whom they do business. In sum, there was ample evidence below for the court's finding that defendant did not put plaintiff on notice that he was doing business in a corporate capacity.

In the case before this Court, Plaintiff never disclosed its interest in the matter. Brian Morris never indicated he was an agent for a corporation—U.S. Pool—or that The Ugly Pool Guy was a dba for an undisclosed corporation. Although Mr. Morris listed an ROC license, nothing put Defendants on notice that they were dealing with a corporation or that the holder of the ROC license was some entity other than Brian Morris. Furthermore, Plaintiff has provided no authority indicating Defendants had any obligation to check corporate records with the Arizona Corporation Commission to ascertain if they were dealing with a corporation.

This Court finds little merit in Plaintiff's contention that We Fix Ugly Pools is "not a legally recognized business entity." Plaintiff presented no proof for this assertion[2] and provided no proof about the status of "We Fix Ugly Pools." "We Fix Ugly Pools" may not be a corporation but that does not necessarily mean it may not be a legally recognized business entity. Neither the trial court nor this Court was given information about the status of "We Fix Ugly Pools."

Plaintiff suggested that (1) Brian Morris' acts were "within the scope of his authority as an agent for U.S. Pool doing business as We Fix Ugly Pools[3] and therefore were to be "deemed to be the acts of US Pool" [sic.]; and (2) supported this claim by referencing *Kitchell Corp. v. Hermansen,* 8 Ariz. App. 424, 427–28; 446 P. 2d 934, 937 (1968). Plaintiff quoted portions of the following:

> The fundamental purpose of a group of business persons incorporating is that a corporation has an existence distinct from the persons composing it. Our laws permit a corporation, as a separate legal entity, to act on its own account through organs of activity called directors, officers, agents, etc. Hermansen and Horwitz and Company has met all the constitutional and statutory requirements of a corporation. As a corporation it may be a disclosed principal on whose behalf its president and vice president may execute a negotiable instrument without personal liability if the requirements of the state negotiable instruments law have been met.

[2] Plaintiff's Memorandum In Support Of Appeal at p. 5, ll. 4–5.
[3] *Id*. at p. 7, ll. 4–5 and ll. 10–12.

Kitchell Corp. v. Hermansen, 8 Ariz. App. 424, 427, 446 P.2d 934, 937 (1968) While the quoted portion of this opinion is accurate, the opinion has little to do with the situation at hand as U.S. Pool was not a disclosed principal and the case before this Court does not refer to ability of a corporation to do business. Instead, our case refers to the ability of a non-disclosed corporation to assert its right to sue on a contract to which it was not a named party. Plaintiff's reliance on *Kitchell Corp. v. Hermansen, id*., is misplaced.

B. Did Brian Morris Have Standing To Sue.

Plaintiff also alleged Brian Morris lacked standing to sue because he lacked a contractor's license. While Plaintiff may be correct in this assertion, A.R.S. § 32–1153, Mr. Morris' lack of standing is the result of his own actions. He never disclosed his agency and never disclosed he was representing a corporation. Similarly, he failed to disclose he did not have a contractor's license. If he lacked standing to sue, it was the result of his actions in failing to disclose his agency relationship with his corporation. This is a harsh result. However, the result accords with the legislative purpose for the law. In *B & P Concrete, Inc. v. Turnbow*, 114 Ariz. 408, 410, 561 P.2d 329, 331 (Ct. App. 1977) our Court of Appeals ruled:

> In barring suit by an unlicensed contractor, there seems little doubt that the legislative intent is to furnish protection to the public by strict licensing requirements even where harsh consequences fall upon those who do contracting work in good faith without an appropriate license.

If Brian Morris is precluded from bringing suit because of an unlicensed status, he is not being treated any differently from any other unlicensed contractor.

C. Is U.S. Pool The Only Party With Standing To Sue.

To have standing to sue, a litigant must have a valid claim. Here, Plaintiff asserted it had both a valid contract claim and a valid claim for unjust enrichment. Plaintiff failed to support either of these assertions. To claim a breach of contract, a litigant must be a party to a contract. Plaintiff failed to demonstrate it had a contract with Defendants despite its agency allegation. In *Goodman v. Physical Res. Eng'g, Inc*., 229 Ariz. 25, 31, ¶ 18, 270 P.3d 852, 858, ¶ 18 (Ct. App. 2011), review denied (Apr. 24, 2012) our Court of Appeals discussed agency in the context of determining if an agency created privity of contract.

> Furthermore, even assuming *arguendo* that TVH was Goodman's agent, there is no evidence TVH ever disclosed it was acting in that capacity when it engaged PRE's services to stake the property. A principal is undisclosed if the third party has no notice the agent is acting for a principal. Restatement § 1.03(2)(b); *cf. Myers–Leiber Sign Co. v. Weirich,* 2 Ariz. App. 534, 536, 410 P.2d 491, 493 (1966) (for agent to avoid personal liability when acting on behalf of principal, agent must disclose agency and identify principal at time of transaction). It appears the majority of cases dealing with undisclosed principals arise in the context of third parties or agents attempting to hold the principal liable

> on a contract. When the situation is reversed, however, it is unlikely a third party can accurately assess the interests at stake, because the third party is unaware of the actual party to the contract. *See* Restatement § 2.03 cmt. f (if third party in doubt whether actor represents actor's interests only, third party lacks reasonable basis to believe actor has power to affect principal's legal position).

The Court of Appeals then concluded:

> Because there is no evidence TVH was acting as Goodman's agent for the staking contract, and PRE had no notice otherwise that Goodman was a party to the contract, there was insufficient evidence for the jury to have found the existence of a contract between PRE and Goodman based upon an agency theory. *See generally* Restatement § 2.03 cmt. f (where principal undisclosed, third party has no knowledge principal is party to contract).

Goodman v. Physical Res. Eng'g, Inc., id., 229 Ariz. at 32, ¶ 20, 270 P.3d at 859, ¶ 20. In *Goodman v. Physical Res. Eng'g, Inc., id.,* the undisclosed party was unable to prevail on its contract claim. Similarly, here, U.S. Pool—as the undisclosed party—is unable to prevail on its contract claim.

Plaintiff also sued for unjust enrichment. Our Court of Appeals discussed the concept of unjust enrichment in *Pyeatte v. Pyeatte*, 135 Ariz. 346, 353, 661 P.2d 196, 203 (Ct. App. 1982) and stated:

> Historically, restitution for the value of services rendered has been available upon either an "implied-in-fact" contract or upon quasi-contractual grounds. D. Dobbs, *Remedies* § 4.2 at 237 (1973); 1 Williston, *Contracts* § 3 and 3A at 10-15 (3d ed. 1957). An implied-in-fact contract is a true contract, differing from an express contract only insofar as it is proved by circumstantial evidence rather than by express written or oral terms. *United States v. O. Frank Heinz Construction Co.*, 300 F. Supp. 396 (D.C.Ill.1969); *Plumbing Shop, Inc. v. Pitts,* 67 Wash.2d 514, 408 P.2d 382, 383 (1965). In contrast, a quasi-contract is not a contract at all, but a duty imposed in equity upon a party to repay another to prevent his own unjust enrichment. The intention of the parties to bind themselves contractually in such a case is irrelevant. 1 Williston, *Contracts* § 3A at 12-15 (3d ed. 1957).

A remaining question is whether equity imposes a duty upon Defendants to repay U.S. Pool for the work allegedly performed by Brian Morris and The Ugly Pool Guy. In *Pyeatte v. Pyeatte, id.,* 135 Ariz. at 353, 661 P.2d at 203 the Court of Appeals ruled:

> Restitution is nevertheless available in quasi-contract absent any showing of mutual assent. While a quasi-contractual obligation may be imposed without regard to the intent of the parties, such an obligation will be imposed only if the circumstances are such that it would be unjust to allow retention of the benefit without compensating the one who conferred it.

In *Freeman v. Sorchych*, 226 Ariz. 242, 251-52, ¶ 27, 245 P.3d 927, 936-37, ¶ 27 (Ct. App. 2011), review denied (Aug. 31, 2011) the Arizona Court of Appeals elaborated on unjust enrichment and held:

> To recover under a theory of unjust enrichment, a plaintiff must demonstrate five elements: (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy provided by law. *City of Sierra Vista v. Cochise Enters., Inc.*, 144 Ariz. 375, 381–82, 697 P.2d 1125, 1131–32 (App.1984) (citing *A & A Metal Bldgs. v. I–S, Inc.*, 274 N.W.2d 183 (N.D.1978)). Thus, a plaintiff must demonstrate that the defendant received a benefit, that by receipt of that benefit the defendant was unjustly enriched at the plaintiff's expense, and that the circumstances were such that in good conscience the defendant should provide compensation. *See Murdock–Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 53, 703 P.2d 1197, 1202 (1985) (citing *Pyeatte v. Pyeatte*, 135 Ariz. 346, 352, 661 P.2d 196, 202 (App.1983)). "However, the mere receipt of a benefit is insufficient" to entitle a plaintiff to compensation. *Id*. at 54, 703 P.2d at 1203. Instead, for an award based on unjust enrichment, a plaintiff must show "that it was not intended or expected that the services be rendered or the benefit conferred gratuitously, and that the benefit was not 'conferred officiously.'" *Id*. (quoting *Pyeatte*, 135 Ariz. at 353, 661 P.2d at 203).

This Court cannot determine if it would be unjust for Defendants to retain the "benefit" allegedly conferred by Plaintiff as Plaintiff failed to properly address the issue.[4] Plaintiff's brief lacks facts and discussion about if the alleged benefit was (1) conferred officiously; or (2) if it would be unjust for Defendants to receive the alleged benefit. Because Plaintiff failed to properly address this issue, this Court shall not further consider it. As stated by our Arizona Supreme Court in *State v. Hiler*, 47 Ariz. 298, 301, 55 P.2d 656, 657 (1936):

> Because the questions upon which the trial court passed have not been properly or aptly presented by appellant in conformity with the rules of this court, and because they have not been fully or adequately argued, we feel we should not pass upon them.

Accord, *State v. Nirschel*, 155 Ariz. 206, 208, 745 P.2d 953, 955 (1987) holding:

> In Arizona, opening briefs must present significant arguments, supported by authority, which set forth an appellant's position on the issues raised. *See* Rule 31.13(c)(1)(iv), Rules of Criminal Procedure, 17 A.R.S.; *State v. McCall*, 139 Ariz. 147, 677 P.2d 920 (1983), *cert. denied*, 467 U.S. 1220, 104 S. Ct. 2670, 81 L.Ed.2d 375 (1984); *State v. Smith*, 125 Ariz. 412, 610 P.2d 46 (1980). Failure to

[4] Defendants argued—in Appellees' Memorandum at p. 12, ll. 13–14, and l. 20 and p. 13, ll. 20–21— (1) the work was negligently performed; and (2) they incurred expenses to repair damages Mr. Morris caused—Appellees' Memorandum, Exhibit A.

> argue a claim constitutes abandonment and waiver of that issue. *State v. McCall*, 139 Ariz. at 163, 677 P.2d at 936. Without providing argument, Nirschel's brief lists his concerns with respect to counsel's failure to object to the hearsay and to counsel's identification of the wallet. These claims are therefore abandoned and waived.

D. Remaining Claims.

Plaintiff failed to demonstrate it had any privity of contract with Defendants. It also failed to prove Brian Morris was acting as its agent when he negotiated with Defendants. The trial court's ruling does not involve claims Defendants may have against Brian Morris and this Court shall not consider any of these claims. Additionally, although the trial court did not provide any reasoning for its dismissal, Plaintiff provided little authority supporting its contention that the trial court had to provide a basis for its ruling. Footnote 3 to *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 495, 733 P.2d 1073, 1078 (1987) states:

> We take this opportunity to voice our objection to such conclusory rulings because they impair effective appellate review. We urge trial judges to articulate their reasoning so appellate courts can determine on appeal whether the ruling was erroneous.

While this may be the better option, nothing in the opinion mandates that the trial judge specify the reasons used for every motion in every case. Indeed, imposing such a burden on the trial courts might prove to be overwhelming in light of the high caseloads our trial courts face. Similarly, while Arizona law has a policy that cases must be decided on their merits, this policy relates to cases and not to claims. As stated, Plaintiff had no case because it had no contractual relationship with Defendants.

Finally, Defendants argued Plaintiff's brief was untimely because a Motion to Reconsider is not the same as a Motion for a New Trial and the trial court ultimately determined Plaintiff's motion was a Motion to Reconsider. Defendant did not raise this claim as a procedural motion as required by Rule 8(c), Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) and thereby deprived Plaintiff of any opportunity to respond to this claim. Because this Court has otherwise affirmed the judgment of the trial court and because due process requires each party to have the opportunity to respond to the claims of the adverse party, this Court shall not address Defendants' issue about whether Plaintiff's filing of a Motion for a New Trial served to extend the time to file an appeal.

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III. CONCLUSION.

Based on the foregoing, this Court concludes the Moon Valley Justice Court did not err by dismissing Plaintiff's case.

IT IS THEREFORE ORDERED affirming the judgment of the Moon Valley Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Moon Valley Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court 052320131900